



STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number:
#HWY- 311733-SH

RFP Title:
MDT Wildlife Accommodation Process

RFP Response Due Date and Time:
August 12, 2015 3:00 p.m., Mountain Time

Number of Pages: 50

ISSUING AGENCY INFORMATION

State Procurement Officer:
SCOTT HICKS

Issue Date:
July 08, 2015

**PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
2701 PROSPECT AVENUE
P.O. BOX 201001
HELENA, MT 59601-1001**

Phone: (406) 444-6033
Fax: (406) 444-5411

TTY Users:
1-800-335-7592 or (406) 444-7696

Website: <http://vendor.mt.gov/>

INSTRUCTIONS TO OFFERORS

Return Sealed Proposal to:

**PURCHASING SERVICES SECTION
MONTANA DEPARTMENT OF TRANSPORTATION
2701 PROSPECT AVENUE
P.O. BOX 201001
HELENA, MT 59601-1001**

Mark Face of Envelope/Package:

RFP Number: #HWY-311733-SH
Proposal Due Date: August 12, 2015

Special Instructions:
(insert special instructions and/or date of pre-Proposal conference, if applicable)

OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:

Authorized Offeror Signatory:

(Please print name and sign in ink)

Offeror Phone Number:

Offeror FAX Number:

Offeror E-mail Address:

Offeror Federal I.D. Number:

Type of Entity (e.g., corporation, LLC, etc.)

OFFERORS MUST RETURN THIS COVER SHEET WITH PROPOSAL

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each Offeror to:

Use the forms provided, i.e., cover page, certification forms, etc.

Submit your Proposal on time. Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late Proposals are never accepted.

Follow the format required in this RFP when preparing your Proposal. Provide point-by-point responses to all sections in a clear and concise manner. Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

Provide complete answers/descriptions. Read and answer all questions and requirements. Don't assume the State or Evaluation Committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the State. The Proposals are evaluated based solely on the information and materials provided in your responses.

To enable the State to determine the capabilities of an Offeror to perform the services specified in this RFP and how the Offeror will complete the Project, the Offeror shall respond regarding its ability to meet the State's requirements. This will include, but is not limited to, providing and describing Offeror's understanding and approach, work plan, methods to be used, detailed schedule, and how the work will be accomplished to meet the Contract requirements as more specifically detailed in the Scope of Services Section.

The following items MUST be included in the Proposal package to be considered responsive. Failure to include any of these items may result in a non-responsive determination.

- ✓ **Signed Cover Sheet**
- ✓ **Signed Addenda (if appropriate)**
- ✓ **Point-by-Point response to all sections and subsections**
- ✓ **Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form if claiming information to be confidential or proprietary in accordance with the Receipt of Proposals and Public Inspection, Public Information Section.**
- ✓ **Complete answers to all requirements of Sections 3, 4, and 5 of this RFP.** In addition, Offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If Offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.

_____	Section 1, Project Overview and Instructions
_____	Section 2, RFP Standard Information
_____	Section 4.1, State's Right to Investigate and Reject
_____	Section 4.3, Oral Presentation and Interview
_____	Section 5.2, Project Funding
_____	Section 5.3, Budget Revisions
_____	Section 6, Proposal Evaluation
_____	Appendix A, Contract
_____	Appendix D, Nondiscrimination and Disability Accommodation Notice
_____	Appendix E, Technical Report Documentation Page

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
RFP Issue Date.....	July 08, 2015
Deadline for Receipt of Written Questions	July 21, 2015
Deadline for Posting of Written Answers to the State's Website	July 28, 2015
Proposal Due Date.....	August 12, 2015
Notification of Offeror Interviews.....	*August, 2015
Offeror Interviews	*August, 2015
Date of Funding Approval (Based on RRC Authorization)	*September
Intended Date for Contract Award	*October, 2015

*The dates above identified by an asterisk are included for planning purposes. These dates are subject to change.

1 PROJECT OVERVIEW AND INSTRUCTIONS

1.1 PROJECT OVERVIEW

- 1.1.1 The STATE OF MONTANA, Department of Transportation (hereinafter referred to as the "State") is seeking a consultant to develop a wildlife accommodations process and guidelines that evaluates the needs as well as feasibility at a project level and on a project-by-project basis. The process must be tailored for MDT and Montana wildlife.
- 1.1.2 A more complete description of the supplies and/or services sought for this Project is provided in the Scope of Services Section.
- 1.1.3 Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.
- 1.1.4 If this Project results in a phased effort, the State may elect either to continue with a recommended next phase, discontinue the Project, or choose to solicit another Offeror for this work.

1.2 CONTRACT TERM

The Contract term will be determined based on the Offeror's Proposal and will be set forth in the Contract that is signed by the Parties.

1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an Offeror is selected and announced by the Procurement Officer, Offerors shall not communicate with any State of Montana Employees regarding this procurement, except at the direction of **Scott Hicks**, the Procurement Officer in charge of the solicitation. Any unauthorized contact may disqualify the Offeror from further consideration. Information for the single point of contact is as follows:

State Procurement Officer:	Scott Hicks
Address:	Purchasing Services Section Montana Department of Transportation 2701 Prospect Avenue PO Box 201001 Helena, Montana 59620-1001
Telephone Number:	(406) 444-6033
Fax Number:	(406) 444-5411
E-mail Address:	shicks@mt.gov

1.4 DEFINITION OF TERMS

For any interpretation of this agreement, the following definitions will apply. Any term not defined shall carry the meaning found in the American Heritage Dictionary of the English language® (Houghton Mifflin), or if not found therein, the Merriam-Webster® online dictionary.

- 1.4.1 **APPENDIX** shall mean any so-named document attached hereto and incorporated herein by reference.
- 1.4.2 **ARM** shall mean the Montana Administrative Rules as now in effect or as amended.
- 1.4.3 **CONSULTANT**. Until a proposal is accepted by execution of the Contract, a person responding to this RFP is an Offeror. Once the Contract is signed by the Parties, the Offeror becomes the Consultant.
- 1.4.4 **CONTRACT** shall mean the document signed by the Parties, the format of which is attached in the appendices and is incorporated herein by reference.
- 1.4.5 **DBE** shall mean Disadvantaged Business Enterprise.
- 1.4.6 **DELIVERABLE(S)** shall mean the meetings and Consultant's work product(s) as defined in the Proposal as modified in the Contract.
- 1.4.7 **DUE DATE** shall be by 3:00 p.m., Mountain Time, on the specified date.
- 1.4.8 **EMPLOYEE(S)** shall have the meaning set forth at MCA § 39-71-118.
- 1.4.9 **EVALUATION COMMITTEE** shall mean the group of people who will review and evaluate the Proposals received for this RFP. Individual Evaluation Committee members will be chosen from the Project Technical Panel.
- 1.4.10 **FHWA** shall mean the Federal Highway Administration.

- 1.4.11 **FORCE MAJEURE** shall mean causes beyond a party's reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the non-performing party.
- 1.4.12 **HQ** shall mean the Montana Department of Transportation Headquarters located at 2701 Prospect Avenue, Helena, MT 59620-1001.
- 1.4.13 **KEY PROJECT PERSONNEL** shall mean all individuals listed in the Proposal.
- 1.4.14 **MAJOR EQUIPMENT** shall mean any item of apparatus or equipment that is not consumed in the Project work and costs \$5,000 or more.
- 1.4.15 **MCA** shall mean the Montana Code Annotated as now in effect or as amended.
- 1.4.16 **NON-MAJOR EQUIPMENT** shall mean any item of apparatus or equipment that is not consumed in the Project work and costs less than \$5,000.
- 1.4.17 **NOTICE** shall be in writing and may be given by email directed to the Liaisons of the Parties.
- 1.4.18 **OFFEROR** shall mean the individual, organization, or corporate entity who submits a Proposal in response to this RFP.
- 1.4.19 **PARTIES** shall mean the State and the Consultant.
- 1.4.20 **PRINCIPAL INVESTIGATOR** shall mean that individual, representing the Offeror, who is responsible for successful completion of the Project, if a contract is awarded.
- 1.4.21 **PROJECT** shall mean the work defined in the Scope of the Project Section of this RFP.
- 1.4.22 **PROPOSAL** shall mean the material(s) submitted in response to this RFP.
- 1.4.23 **REFERENCE QUESTIONNAIRE** shall mean a professional reference completed by clients of Offeror for whom a similar contract has been awarded to Offeror.
- 1.4.24 **RESEARCH PROJECT MANAGER** shall mean that individual, representing the State, who is the sole point of contact with the Principal Investigator once the Contract is in place.
- 1.4.25 **RFP** shall mean Request for Proposal.
- 1.4.26 **RRC (Research Review Committee)** shall mean the committee that approves or rejects final Project funding. The Technical Panel will present the top Offeror's Proposal to the State's RRC for final funding approval. The RRC meets at most once per month, on the last Wednesday of each month. In order to be placed on that month's RRC agenda for final funding approval, at least two weeks prior to the scheduled RRC meeting, a Proposal must be in final form, including the state and federal fiscal year budget breakdowns as described in the Cost Proposal Section of this RFP, and must have a positive recommendation from the Technical Panel.
- 1.4.27 **STATE OR MDT** shall mean the Montana Department of Transportation, a duly created and organized state agency existing under and by virtue of the laws of the State of Montana, MCA § 2-15-2501, *et seq.*
- 1.4.28 **TECHNICAL PANEL** shall mean the group of people who are assigned by State management to oversee the Project.
- 1.4.29 **TECHNICAL REPORT DOCUMENTATION PAGE** shall mean the so-named Appendix.

1.5 REQUIRED REVIEW

- 1.5.1 **REVIEW RFP**
 - 1.5.1.1 Each Offeror should review carefully the entire RFP and Contract terms, and promptly notify, in writing, the State Procurement Officer of any ambiguity, inconsistency, unduly restrictive specifications, or error which Offeror discovers upon examination of the RFP. This should include any terms or requirements within this RFP that either preclude the Offeror from responding to this RFP or add unnecessary cost.
 - 1.5.1.2 Said notification must be accompanied by an explanation and suggested modification, and must be received by the deadline set forth herein for receipt of written or e-mailed inquiries, as set forth in the Form of Questions Section.
 - 1.5.1.3 The State will make any final determination of changes to this RFP by issuing addenda to this RFP. Addenda referencing RFP **#HWY-311733-SH** may be posted by the State up to 48 hours prior to the Proposal opening date and time referenced on the cover page.

1.5.2 FORM OF QUESTIONS

- 1.5.2.1 Offerors with questions, requiring clarification or interpretation of any section within this RFP, must address these questions in writing to the State Procurement Officer on or before July 21, 2015.
- 1.5.2.2 Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.
- 1.5.2.3 Each question must provide clear reference to the section, page, and item in question.
- 1.5.2.4 Questions received after the deadline will not be considered.

1.5.3 STATE'S ANSWERS

- 1.5.3.1 The State will provide an official written answer by July 28, 2015 to all questions received.
- 1.5.3.2 The State's response will be by formal written addendum.
- 1.5.3.3 Any other form for interpretation of, correction of, or change to this RFP will not be binding upon the State.
- 1.5.3.4 By 5:00 p.m., Mountain Time, on the date listed in this section; any formal written addendum will be posted on the State's website alongside the posting of this RFP at <http://svc.mt.gov/gsd/onestop/SolicitationList.aspx?AgencyID=14>.

1.5.4 ACKNOWLEDGMENT OF ADDENDA

- 1.5.4.1 All addenda issued pursuant to this RFP must be signed by the Offeror and returned with the Offeror's Proposal.
- 1.5.4.2 Failure to include signed copies of addenda will result in disqualification of the Proposal.

1.6 GENERAL REQUIREMENTS

1.6.1 ACCEPTANCE OF CONTRACT

- 1.6.1.1 By submitting a Proposal, Offeror acknowledges an understanding of this RFP and Offeror will agree to acceptance of and compliance with the Contract, as set within the appendices.
- 1.6.1.2 Much of the language included in the Contract reflects requirements of Montana and federal law.

1.6.2 ADDITIONS OR EXCEPTIONS

- 1.6.2.1 Requests for additions or exceptions to the Contract terms, including waiver of any necessary licenses, or any added provisions must be submitted to the State Procurement Officer by the date for receipt of written questions as identified in the Form of Questions Section, and must be accompanied by an explanation of why the exception or waiver is being sought and what specific effect it will have on the Offeror's ability to respond to this RFP or perform the Contract.
- 1.6.2.2 The State reserves the right to address nonmaterial requests for exceptions to the contract language with the highest scoring Offeror during contract negotiation.
- 1.6.2.3 The State shall identify any revisions to the Contract language in formal written addenda issued for this RFP. The addenda will apply to all Offerors submitting a Proposal.
- 1.6.2.4 The State, in its sole discretion, will make any final determination of changes to the Contract.

1.6.3 RESULTING CONTRACT. This RFP and any addenda, the Offeror's Proposal, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

1.6.4 CONTRACT NEGOTIATION. During contract negotiation, the State reserves the right to address with the highest-scoring Offeror non-material requests for exceptions.

1.6.5 OFFEROR'S SIGNATURE

- 1.6.5.1 Each Proposal must be signed in ink by an individual legally authorized to bind the Offeror.
- 1.6.5.2 The Offeror's signature on a Proposal in response to this RFP guarantees that the Proposal has been made without acts or omissions prohibited by Title 2, Chapter 2,

MCA; price fixing; restraint of trade; or effort to preclude the State from obtaining the best possible supply or service.

1.6.6 OFFER IN EFFECT FOR 180 DAYS

1.6.6.1 A Proposal may not be modified, withdrawn, or canceled by the Offeror for a 180-day period following the later of the deadline for Proposal submission as defined in the Schedule of Events, or receipt of a best and final offer, if required.

1.6.6.2 Any inability to enter into a contract shall be communicated by the Offeror in writing to the State Procurement Officer as soon as reasonably practicable.

1.6.7 FAILURE TO HONOR PROPOSALS. If an Offeror to whom a contract is awarded refuses to accept the award, the State may, in its sole discretion, take action to recover its damages and/or suspend that Offeror for a period of time from entering into any contracts with the State.

1.6.8 AUTHORITY TO CONTRACT. Proof of each signator's authority to bind a business entity to the Contract shall be provided with the Proposal. Sample forms are in the appendices.

1.7 SUBMITTING A PROPOSAL

1.7.1 ORGANIZATION OF PROPOSAL

1.7.1.1 Offerors must organize their Proposal into sections that follow the format of this RFP, with tabs separating each section. Proposals should be bound with pages consecutively numbered. A point-by-point response to all numbered sections, subsections, and appendices is required.

1.7.1.2 Except in response to the Offeror Qualifications/Informational Requirements Section, if no explanation or clarification is required in the Offeror's response to a specific subsection, the Offeror shall so indicate in the point-by-point response or utilize a blanket response for the entire section with the following statement: "(Offeror's Name)" understands and will comply.

1.7.1.3 An Offeror making the statement, such as "Refer to our literature..." or "Please see www...com" may be deemed non-responsive or receive point deductions.

1.7.1.4 If making reference to materials located in another section of the Proposal, specific page numbers and sections must be noted.

1.7.1.5 The Evaluation Committee is not required to search through external literature or another section of the Proposal to find a response.

1.7.2 FAILURE TO COMPLY WITH INSTRUCTIONS

1.7.2.1 An Offeror failing to comply with instructions may be subject to point deductions.

1.7.2.2 The State may choose not to evaluate, may deem non-responsive, and/or may disqualify from further consideration any Proposal that does not follow this RFP format, is difficult to understand, is difficult to read, or is missing any requested information, including completed reference questionnaires.

1.7.3 MULTIPLE PROPOSALS. An Offeror, at Offeror's option, may submit multiple Proposals, in which case each Proposal shall be evaluated as a separate Proposal.

1.7.4 COPIES REQUIRED AND DEADLINE FOR RECEIPT OF PROPOSALS

1.7.4.1 For each Proposal, the Offeror must submit to the Purchasing Services Section two (2) original Proposals and copies.

1.7.4.2 Each Proposal must be sealed and labeled on the outside of the package to indicate clearly that it is in response to RFP #HWY-311733-SH.

1.7.4.3 Each Proposal must include one electronic copy of the Proposal submitted.

1.7.4.4 Proposals must be received at the Purchasing Services Section, Administrative Division prior to 3:00 pm, Mountain Time, August 12, 2015.

1.7.4.5 No facsimile or e-mail Proposal sent directly to the State will be accepted; however, facsimile or e-mail Proposals sent to a 3rd party will be accepted when printed and delivered to the State in a properly addressed, sealed envelope.

1.7.5 LATE PROPOSALS

1.7.5.1 Regardless of cause, late Proposals will not be accepted and will be disqualified automatically from further consideration.

1.7.5.2 It shall be the Offeror's sole risk to assure delivery at the designated office by the designated time.

1.7.5.3 Late or disqualified Proposals will not be opened and will be destroyed.

- 1.7.6 **ADDRESSING OF PROPOSALS.** Proposals MUST be submitted in a sealed package and marked as shown below:

#HWY-311733-SH
Purchasing Services Section
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59601-1001

Proposals that are not submitted in a sealed package, with the Request for Proposal Number clearly labeled on the outside **WILL BE DISQUALIFIED.**

1.8 COST/OWNERSHIP OF PROPOSALS

1.8.1 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

- 1.8.1.1 All costs for developing and delivering a Proposal responsive to this RFP, and all costs for any presentation of the Proposal as requested by the State are entirely the responsibility of the Offeror.
- 1.8.1.2 The State is not liable for any expense incurred by the Offeror in the preparation and presentation of the Proposal or for any other costs incurred by the Offeror prior to execution of a contract.

- 1.8.2 **ALL TIMELY SUBMITTED MATERIALS BECOME STATE PROPERTY.** All materials submitted in response to this RFP become the property of the State.

2.1 AUTHORITY

- 2.1.1 This RFP is issued under the authority of Section 18-4-304, MCA and ARM 2.5.602.
- 2.1.2 This RFP process is a procurement option allowing the award to be based on stated evaluation criteria.
- 2.1.3 This RFP states the relative importance of all evaluation criteria. No evaluation criteria, other than as outlined in this RFP, will be used.

2.2 OFFEROR COMPETITION

- 2.2.1 The State encourages free and open competition among Offerors.
- 2.2.2 Whenever possible and consistent with the State's need to procure technically sound, cost-effective services and supplies, the State will design specifications, Proposal requests, and conditions to accomplish this objective.

2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

- 2.3.1 **PUBLIC INFORMATION.** With the exceptions listed in this section, all information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the passage of the time for receipt of Proposals. The party requesting copies is liable for the cost of their production.
- 2.3.2 **EXCEPTION.** Unless prior written consent to disclosure has been given by the Offeror, the following are not public information:
 - 2.3.2.1 bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, which the Offeror has marked, separated, and documented;
 - 2.3.2.2 matters involving individual safety as determined by the State;
 - 2.3.2.3 any company financial information requested by the State to determine Offeror's responsibility as set out in Section 18-4-308, MCA; and
 - 2.3.2.4 other constitutional protections. See 18-4-304, MCA.
- 2.3.3 **STATE PROCUREMENT OFFICER REVIEW OF PROPOSALS**
 - 2.3.3.1 Upon opening the Proposals received in response to this RFP, the State Procurement Officer will review the Proposals and separate out and retain in a secure location any information that meets the above exceptions, providing the following conditions have been met:
 - 2.3.3.1.1 Confidential information is clearly marked and separated from the rest of the Proposal.
 - 2.3.3.1.2 The Proposal does not contain confidential material in the budget section.
 - 2.3.3.1.3 An affidavit from an Offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each Proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://gsd.mt.gov/ProcurementServices/rfpprocess.mcpx> or by contacting the State Procurement Officer.
 - 2.3.3.2 Information separated out under this process will be available for review only by the State Procurement Officer, the Evaluation Committee members, and limited other designees. In the event of a "right to know" (open records) request, the party claiming confidentiality shall pay all legal costs and fees associated with defending confidentiality.
 - 2.3.3.3 The claim of a trade secret must be reasonable. If materials or information that is not reasonably considered a "trade secret" is included in a request for the trade secret exception, the Proposal will be rejected as non-responsive and will not be considered. In such cases, an Offeror will not be given an opportunity to revise the Proposal.

2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.4.1 INITIAL CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NON-RESPONSIVE

- 2.4.1.1 Initially, each Proposal will be classified as either “responsive” or “non-responsive,” in accordance with ARM 2.5.602(8).
- 2.4.1.2 Any Proposal may be found non-responsive at any time during this RFP process. If a Proposal is found to be non-responsive, it will not be considered further.

2.4.2 DETERMINATION OF RESPONSIBILITY

- 2.4.2.1 The State Procurement Officer will determine whether an Offeror has met the standards of ARM 2.5.407.
- 2.4.2.2 Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that could result in a determination under the rule.
- 2.4.2.3 If an Offeror is found to be out of compliance with the rule, the determination must be in writing, be made a part of the procurement file, and be mailed to the affected Offeror.

2.4.3 EVALUATION OF PROPOSAL

- 2.4.3.1 The Evaluation Committee will evaluate all responsive Proposals and recommend to:
 - 2.4.3.1.1 award a contract to the highest-scoring Offeror,
 - 2.4.3.1.2 seek discussion,
 - 2.4.3.1.3 negotiate, and/or
 - 2.4.3.1.4 request a best and final offer.
- 2.4.3.2 All responsive Proposals will be evaluated based on stated evaluation criteria.
- 2.4.3.3 In scoring against stated criteria, the State may consider such factors as accepted industry standards and a comparative evaluation of all other qualified Proposals in terms of differing budget, quality, and contractual factors.
- 2.4.3.4 These scores will be used to determine that offering a contract is most advantageous to the State.
- 2.4.3.5 If the Evaluation Committee meets to deliberate and evaluate the Proposals, the public may attend and observe the Evaluation Committee deliberations.

2.4.4 COMPLETENESS OF PROPOSALS

- 2.4.4.1 Selection and award will be based on the Proposal and other items outlined in this RFP.
- 2.4.4.2 Proposals may not include references to information located elsewhere, such as Internet websites or libraries. Information or materials presented by an Offeror outside of the formal Proposal, subsequent discussion/negotiation, or a “best and final offer” will not be considered, will have no bearing on any award, and may result in the Proposal being disqualified from further consideration.

2.4.5 OPPORTUNITY FOR DISCUSSION AND/OR ORAL PRESENTATION/PRODUCT DEMONSTRATION

- 2.4.5.1 After receipt of all Proposals and prior to the determination of the award, should clarification be necessary, the State, in its sole discretion, may initiate discussions with one or more Offerors who have scored the most points through this RFP evaluation process.
- 2.4.5.2 An Offeror may be requested to make an oral presentation and/or product demonstration to clarify the Offeror’s Proposal or to define further the offer.
- 2.4.5.3 In any case, Offerors should be prepared to send to HQ qualified personnel to discuss technical and contractual aspects of the Proposal.
- 2.4.5.4 Oral presentations and/or product demonstrations, if requested, shall be at the Offeror’s expense.
- 2.4.5.5 Prior to the oral presentation, the State will notify the Offerors of any presentation requirements and time restrictions.
- 2.4.5.6 Prior to the oral presentation, the Offeror must provide the State with a list of names of all personnel, including subconsultants, attending the oral presentation with position titles, tenure with the company, and relationship to the Project.

- 2.4.5.7 The presentation must include a review of the Proposal by section and how the Offeror will meet the requirements of this RFP.
- 2.4.5.8 At least one week prior to the presentation, the Offeror must provide the State with any presentation materials.
- 2.4.5.9 The State reserves the right to ask questions throughout the presentation.
- 2.4.5.10 Oral Interviews, if required, will be evaluated using the scoring guide found in the Evaluation Criteria Section of this RFP and will constitute up to an additional 200 points.
- 2.4.6 **BEST AND FINAL OFFER**
 - 2.4.6.1 If additional information is required to make a final decision, the State, in its sole discretion, may request a "best and final offer" from one or more Offerors.
 - 2.4.6.2 Offerors may be asked to submit a "best and final offer," which must include any and all discussed and/or negotiated changes.
- 2.4.7 **PROPOSAL REVISION.** If the Proposal is revised during negotiations, within one (1) business day of request by the State, the Offeror must submit, a revised Proposal, electronically in PDF format. All revisions to the Proposal must be itemized and explained in an accompanying letter.
- 2.4.8 **EVALUATOR/EVALUATION COMMITTEE RECOMMENDATION FOR CONTRACT AWARD**
 - 2.4.8.1 Except as otherwise provided herein, the Contract shall be awarded to the Offeror that achieves the highest score.
 - 2.4.8.2 The evaluator/Evaluation Committee will provide to the State Procurement Officer a written recommendation for contract award, which shall contain the scores, justification, and rationale for its decision.
 - 2.4.8.3 Before concurring in the evaluator/Evaluation Committee's recommendation, the State Procurement Officer will review the recommendation to ensure its compliance with this RFP process and criteria.
- 2.4.9 **REQUEST FOR DOCUMENTS NOTICE AND SECRETARY OF STATE REGISTRATION**
 - 2.4.9.1 Upon concurrence with the evaluator/Evaluation Committee's recommendation, the State Procurement Officer will issue to the chosen Offeror a "Request for Documents Notice" to obtain the required documents/information, such as insurance documents, contract performance security, an electronic copy of any requested material, and a corporate resolution or similar documentation for any business entity.
 - 2.4.9.2 Within 10 business days of receiving the "Request for Documents Notice", the successful Offeror must register with the Secretary of State and obtain a certificate of authority to demonstrate that the successful Offeror is in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665 or visit their website at <http://sos.mt.gov/>. This section does not apply to a natural person, conducting business in his/her full, true and correct name, (Mont. Code Ann. § 30-13-201(1)).
 - 2.4.9.3 Receipt of the "Request for Documents Notice" does not constitute a contract, and no work may begin until the Contract is signed by the Parties.
 - 2.4.9.4 The State Procurement Officer will notify all other Offerors of the State's selection.
- 2.4.10 **CONTRACT EXECUTION**
 - 2.4.10.1 Upon receipt of all required materials requested in the "Request for Documents Notice," the Contract will be provided by letter.
 - 2.4.10.2 If the signed Contract is not received by the State Procurement Officer within ten (10) business days of the date on the letter, the State may move to the next ranked Offeror, or in its sole discretion, cancel this RFP.

2.5 STATE'S RIGHTS RESERVED

- 2.5.1 While the State has every intention to award a contract as a result of this RFP, issuance of this RFP in no way constitutes a commitment by the State to award and execute a contract.
- 2.5.2 Upon a determination that such action would be in its best interest, the State, in its sole discretion, may:
 - 2.5.2.1 cancel or terminate this RFP (18-4-307, MCA);
 - 2.5.2.2 reject any Proposal (ARM 2.5.602);

- 2.5.2.3 waive any undesirable, inconsequential, or inconsistent provisions of this RFP (ARM 2.5.505); and/or
- 2.5.2.4 not award a contract (ARM 2.5.602)
- 2.5.2.5 If awarded, terminate any contract if the State determines adequate funds are not available (18-4-313, MCA).

3.1 PROBLEM STATEMENT, SCOPE, AND OBJECTIVES

MDT has accommodated a variety of wildlife species in the last two decades in a number of different ways. However, the processes, justification, and criteria used for recommending and implementing accommodations have varied just as the technology and practices in this field have rapidly evolved. MDT needs to standardize how these features are incorporated into construction projects by developing a documented justification process to determine the appropriateness of including wildlife accommodations in project development and design.

Having a well-defined process will assist MDT personnel and consultants in a multitude of ways. Not only will it aid in determining the appropriateness of including wildlife accommodations within proposed MDT projects, it will improve consistency and communication that in turn creates an internal process based on trust and buy-in throughout the Department. Lastly, it will document the rationale for wildlife accommodations with a transparent and understandable process.

The overall objective is to develop a wildlife accommodations process and guidelines that evaluates the needs as well as feasibility at a project level, specifically tailored to meet MDT's project development processes and wildlife found in Montana. This project will **not** include the Offeror performing animal-vehicle collision/carcass analysis, GIS modeling, linkage zone assessments, and/or prioritization. This project will provide a process by which to evaluate a standardized suite of criteria to assess and justify the need and feasibility of incorporating accommodation features into MDT projects. The process will address the appropriate timing and applicable methodologies that will optimize project development schedules.

This project will identify the relevant criteria and develop a standard process to be used by the MDT Design Team to determine appropriate inclusion of wildlife accommodations based on need and feasibility on a project-by-project basis. Need may be based on safety and/or connectivity criteria such as animal-vehicle collisions, maintaining biodiversity, need for interconnecting habitat, sensitivity of the affected species, and/or other applicable criteria. Feasibility may include such items as initial cost, long-term maintenance cost, land use, land ownership, expected growth and traffic, topography, road geometrics, and other applicable items. The process and guidelines documentation will be a living document that can be revised and adapted to new needs and requirements. It will need to encompass procedures that fit into MDT's current business processes. It will define a decision making process that considers the need and feasibility of wildlife accommodations based on justifications, criteria, and design considerations on a project level basis.

In Offeror's own words, concisely express Offeror's understanding of and insight into the problem, scope, and objectives.

3.2 BACKGROUND SUMMARY

MDT's mission statement is to serve the public by providing a transportation system and services that emphasize quality, safety, cost effectiveness, economic vitality, and sensitivity to the environment. An essential part of that mission is to integrate ecological considerations early in the project development process of each potential project. These considerations include wildlife accommodations as an element of highway projects to address:

- *Public safety*- Montana ranked third nationally in the likelihood that an individual driver will crash into a deer during the next year. The likelihood of an individual driver hitting a deer in the next year in Montana is 1 in 75 (2013-2014 State Farm Survey).
- *Wildlife habitat connectivity*- This is the degree to which landscape features, including highways, allow for animal movement. Habitat connectivity is important for gene flow, wildlife movement (daily, seasonal, and dispersal success), re-occupancy of historic usage areas, range

expansion, re-connecting isolated populations, and maintaining/creating access to resources. Wildlife movement is essential to the survival of many wildlife species.

MDT has accommodated a variety of wildlife species in the last two decades in a number of different ways. Yet, there is not a documented process in place to consistently determine the appropriateness and justify the inclusion of wildlife accommodations on highway projects. General information regarding MDT's design processes can be found on the Manuals and Guides web page at:

<http://www.mdt.mt.gov/business/consulting/>

In Offeror's own words, concisely express Offeror's understanding of the background information regarding the research topic. This should include the following:

- 3.2.1 A summary of the findings of a preliminary literature search and state the relationship of the proposed study to prior and current research. TRB's Transportation Research International Documentation (TRID, <http://trid.trb.org/>) and Research in Progress (RIP, <http://rip.trb.org/>) databases should be searched as a part of this preliminary literature search.
- 3.2.2 The summary should reveal Offeror's understanding of underlying principles and should clearly indicate Offeror's appreciation of the problem.
- 3.2.3 The importance of this part of the Proposal should not be underestimated. A comprehensive background summary ensures all aspects of the research topic have been adequately considered so new research can build upon prior work rather than duplicate it.

3.3 BENEFITS/BUSINESS CASE

- 3.3.1 In Offeror's own words, concisely express Offeror's understanding of potential benefits (i.e. business case) expected from the research. The business case is the reason for initiating this Project, need for the results of this Project, and description of the value and benefits of the Project. Possible benefits include cost savings (both to then State and the public), increased safety, improved service, and improved procedures.
- 3.3.2 Describe how the research results can be used, and by whom, to improve transportation practice.

3.4 TASKS

The Offeror shall describe how they will conduct the following major tasks. Additional and/or alternate tasks may be suggested by the Offeror in Proposals to ensure achievement of Project objectives. Any instrument (survey, interview questions, etc.) and the specific contact list must be reviewed and approved in advance by the Project Technical Panel.

- 3.4.1 **Literature Review.** Review literature of best practices and other state DOT's internal guidance and procedures.
- 3.4.2 **Understand and assess** MDT's current project development business processes.
- 3.4.3 **Identify Montana-specific** criteria and applicable methodologies/guidance that allows flexibility and application of judgment in determining the need for wildlife accommodations.
- 3.4.4 **Ascertain** Montana-specific criteria and applicable methodologies/guidance to use in determining the feasibility of wildlife accommodations.
- 3.4.5 **In consultation with MDT** and the technical panel, coordinate and consult with various regulatory/resource agencies throughout the project.
- 3.4.6 **Incorporate** the wildlife accommodation process/activities into MDT's design and construction process and flowcharts to optimize the project development schedule.
- 3.4.7 **Desk Guide.** Develop a desk guide for the process (limited to five pages).
- 3.4.8 **Adaptive Management.** Develop an adaptive management strategy/plan to ensure the methodology/guidance remains a living document.

3.5 DATA

All data required to successfully complete this Project and the source for this data must be delineated.

- 3.5.1 If the Offeror requires other data, the Offeror can ask if the State can provide this additional data as set forth in the Required Review, Form of Questions Section or the Consultant can acquire this data elsewhere.

3.6 STATE INVOLVEMENT

Detail any and all assistance the Offeror will require from the State and the timeframe(s) in which this assistance is required.

3.7 MEETINGS AND DELIVERABLES

Offerors must include all deliverables and meetings in their proposal.

3.7.1 Deliverables

3.7.1.1 FORMAT

- 3.7.1.1.1 All Deliverables shall be submitted first in draft format. Draft Deliverables are the Consultant's vision of the complete and final Deliverables.
- 3.7.1.1.2 Second draft Deliverables will be submitted within two weeks following receipt of the State's comments on the first draft Deliverables.
- 3.7.1.1.3 All future revisions will be submitted no later than one week following receipt of the State's comments.
- 3.7.1.1.4 For each Deliverable, a line item response to each comment is required.
- 3.7.1.1.5 Deliverables are considered drafts until Notice of acceptance by the State.
- 3.7.1.1.6 Consultant shall submit all Deliverables, in their entirety, in both Microsoft Word® and Adobe Acrobat®-compatible electronic format.
- 3.7.1.1.7 Deliverables are expected to be of exceptional quality and prepared in conformance with the following:
 - 3.7.1.1.7.1 Section 5.1, Project Level Reporting, of the March 2011 Research, Development, and Technology Transfer Guidelines for the Montana Department of Transportation, which can be found at: <http://www.mdt.mt.gov/other/research/external/docs/rmuguide.pdf> and
 - 3.7.1.1.7.2 Montana Department of Transportation's Report Writing Requirements, which can be found at http://www.mdt.mt.gov/other/research/external/docs/report_guidelines.pdf.
- 3.7.1.1.8 All Deliverables and draft Deliverables must be reviewed by a person in addition to being spell-checked.
- 3.7.1.1.9 All data should be expressed in metric units with the English units following in parentheses or an English to Metric conversion chart must be included in all reports that contain data in either English or metric units.

3.7.1.2 REQUIRED REPORTS

- 3.7.1.2.1 MONTHLY PROGRESS REPORTS will be submitted on or before the 15th of each month following the reporting period. These reports will at a minimum include:
 - 3.7.1.2.1.1 discussion of each of the major tasks outlined in the Proposal and whether they have been completed or are still in progress;
 - 3.7.1.2.1.2 planned and actual time schedule for each of the tasks, including the overall percent complete using the expended versus planned budget;
 - 3.7.1.2.1.3 discussion of problems (financial, staff, equipment, technical) as they affect the individual tasks, as well as their resolution or attempts at resolution;
 - 3.7.1.2.1.4 discussion of major accomplishments or discoveries and their significance especially with respect to implementation; and
 - 3.7.1.2.1.5 fiscal expenditures.
- 3.7.1.2.2 TASK REPORTS will be submitted by the end of the month following completion of each task and will be prepared with sufficient detail as to be compiled into the final report.
- 3.7.1.2.3 FINAL REPORT AND COVER PICTURE
 - 3.7.1.2.3.1 The Final Report Cover picture shall be submitted as a separate electronic file, preferably a *.jpg.
 - 3.7.1.2.3.2 FORMAT. The Final Report shall include:
 - 3.7.1.2.3.2.1 title page, containing the following credit reference:

Prepared for the
MONTANA DEPARTMENT OF TRANSPORTATION
in cooperation with the
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

- 3.7.1.2.3.2.2 Technical Report Documentation Page, found at page 3 of http://www.mdt.mt.gov/other/research/external/docs/report_guidelines.pdf;
- 3.7.1.2.3.2.3 disclaimer found at page 3 of http://www.mdt.mt.gov/other/research/external/docs/report_guidelines.pdf;
- 3.7.1.2.3.2.4 ADA alternative format statement found at page 3 of http://www.mdt.mt.gov/other/research/external/docs/report_guidelines.pdf;
- 3.7.1.2.3.2.5 table of contents;
- 3.7.1.2.3.2.6 summary or abstract, including a brief description of the work and conclusions;
- 3.7.1.2.3.2.7 introduction, including the problem, its background, and a concise history of research;
- 3.7.1.2.3.2.8 work plan, including the methods, data collection, description of sites and activities, and an analysis of the data;
- 3.7.1.2.3.2.9 findings and conclusions; and
- 3.7.1.2.3.2.10 literature cited or references.
- 3.7.1.2.4 RESEARCH PROJECT SUMMARY REPORT
 - 3.7.1.2.4.1 FORMAT. The text will include the following sections: introduction, what we did, what we found, and what the researchers recommend. Only text and graphics should be submitted.
 - 3.7.1.2.4.2 A sample report can be viewed at: http://www.mdt.mt.gov/research/docs/reconfig/project_summary.pdf.
- 3.7.1.2.5 IMPLEMENTATION REPORT
 - 3.7.1.2.5.1 FORMAT. The text will include the following sections: introduction and purpose, implementation summary, and implementation recommendations. Only text and graphics should be submitted.
 - 3.7.1.2.5.2 A sample implementation report can be found at http://www.mdt.mt.gov/other/research/external/docs/research_proj/ref_unds/implementation.pdf.
- 3.7.1.3 Based on the scope, approach, and results, a communication/technology transfer plan may be required. Offerors may propose this plan, as appropriate.
- 3.7.1.4 Based on the Project scope, approach, and results, a performance measures report, including qualitative and/or quantitative performance measures as appropriate (see example: http://www.mdt.mt.gov/other/research/external/docs/research_proj/rest_area/pm_report.pdf) and a TR News (<http://www.trb.org/Publications/PubsTRNewsMagazine.aspx>) Research Pays Off article may be required. Offerors may propose these products, as appropriate.
- 3.7.1.5 TEST METHODS
 - 3.7.1.5.1 Any test methods to be developed and proposed as national standards must be submitted, in cooperation with the State, first to American Association of State Highway and Transportation Officials (AASHTO).
 - 3.7.1.5.2 If test methods are not adopted through AASHTO, they may be submitted through American Society for Testing and Materials (ASTM) or other national standard organizations.

- 3.7.1.5.3 See document on How to Turn Materials Related Research into a Formal AASHTO Materials Standard Specification at <ftp://ftp.mdt.mt.gov/research/other/ mtrls-related research-aashto std-12-23-13.docx>.

3.7.2 Meetings

- 3.7.2.1 All meetings shall be attended by Consultant's Principal Investigator and any others deemed necessary by the Consultant or State, unless otherwise specified in the Proposal.
- 3.7.2.2 KICK-OFF MEETING will be held to discuss the scope of work, timelines, and any issues.
- 3.7.2.3 Based on the complexity of the Project, Offerors may choose to propose interim meetings.
 - 3.7.2.3.1 Offerors will add interim meetings to Offeror's Proposal, as appropriate, based on the research approach and complexity of the Project.
 - 3.7.2.3.2 For all Projects scheduled for two years or more duration, annual meetings must be included in the Proposal.
- 3.7.2.4 Within two weeks after each of the above Meetings, the Consultant shall prepare and submit to the State for approval, minutes from the meeting.
- 3.7.2.5 FINAL ORAL PRESENTATION. The purpose of this presentation is to formally present research project and results to then States Employees and other interested parties.
- 3.7.2.6 Two weeks prior to each of the above Meetings, and after seeking input from the State's Research Project Manager, the Consultant will prepare and submit the meeting agenda and materials.
- 3.7.2.7 IMPLEMENTATION MEETING
 - 3.7.2.7.1 Purpose: Review Consultant's implementation recommendations, determine which of those or parts thereof will be implemented, additional items to be implemented, and any unmet research needs.
 - 3.7.2.7.2 At the option of the State, this meeting may be held in conjunction with the Final Oral Presentation or via conference call.
 - 3.7.2.7.3 An implementation report, as detailed in the Required Reports Section, will be delivered to the State within two weeks of the implementation meeting.

3.8 SCHEDULE

Provide a detailed schedule for the work proposed. The schedule must contain realistic timeframes for completing each task and deliverable, and completing the Project.

3.9 COMMUNICATION AND QC/QA

- 3.9.1 The Scope of Services must address Deliverable quality and how quality will be guaranteed (i.e., use of editing staff and/or peer reviewer).
- 3.9.2 Ongoing communication between the Consultant and Research Project Manager, and Project QA/QC are critical to the success of the Project. The Scope of Services must include a description of the steps the Consultant will take to ensure that QA/QC and regular communication occurs with the State's Research Project Manager.

4 OFFEROR QUALIFICATIONS

4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

- 4.1.1 The State may make such investigations as deemed necessary to determine the ability of the Offeror to provide the requested services.
- 4.1.2 The State reserves the right to reject any Proposal if the evidence submitted by, or investigation of, the Offeror fails to satisfy the State that the Offeror is qualified to carry out the obligations of the Contract.
- 4.1.3 This includes the State's ability to reject the Proposal based on negative references.

4.2 OFFEROR QUALIFICATIONS/INFORMATIONAL REQUIREMENTS

The research team assembled to develop this guidance document must include experts in business processes, business analysis, communication, transportation engineering and design, wildlife biology and behavior, transportation ecology, and an understanding of State and Federal Environmental laws and regulations. Experience working with a state department of transportation is preferred. The research team is expected to work closely with MDT staff.

4.2.1 REFERENCES

- 4.2.1.1 The Offeror shall provide three (3) references, validating the ability to perform the type of services required in this RFP. If more than three references are received, only the first three will be scored.
 - 4.2.1.2 Since reference questions are based on a contractual relationship, the optimal reference is one that has participated in a contractual relationship with the Offeror.
 - 4.2.1.3 The references may include governments or universities to which the Offeror successfully has provided services of the type referenced in this RFP.
 - 4.2.1.4 All references must have comprehensive knowledge about the services provided.
 - 4.2.1.5 References should be for services provided within the last 5 years.
 - 4.2.1.6 All reference questionnaires must be completed using "SurveyMonkey" link https://www.surveymonkey.com/s/WILDLIFE_ACCOMMODATIONS
 - 4.2.1.6.1 The reference questionnaire to potential references are in the appendices.
 - 4.2.1.6.2 The Offeror must facilitate the reference process by providing to each person giving a reference for the Offeror:
 - 4.2.1.6.2.1 this link: https://www.surveymonkey.com/s/WILDLIFE_ACCOMMODATIONS,
 - 4.2.1.6.2.2 the identity of the Offeror, and
 - 4.2.1.6.2.3 the identity of the Offeror's Employees who will perform work on the Project.
 - 4.2.1.6.3 The reference questionnaires must be completed by the Proposal due date and time. The questionnaire link will be closed at that date and time.
 - 4.2.1.6.4 If there are problems with the questionnaire link, questionnaire, or an alternate format is needed, Offeror should give Notice to the State Procurement Officer, referencing RFP # HWY-311733-SH-Wildlife Accommodation Process.
 - 4.2.1.7 No points for references will be awarded if the questionnaires are not received. It is the Offeror's responsibility to ensure timely completion of questionnaires.
 - 4.2.1.8 The State reserves the right to verify the validity of references and any reference information it receives.
 - 4.2.1.9 The references may be contacted to verify Offeror's ability to perform the Contract.
 - 4.2.1.10 The State reserves the right to use any information or additional references deemed necessary to establish the ability of the Offeror to complete the Project.
 - 4.2.1.11 Negative references may be grounds for Proposal disqualification.
 - 4.2.1.12 If multiple Employees of any entity are used as references, they will be considered as one reference.
- #### 4.2.2 RESUMES/COMPANY PROFILE AND EXPERIENCE
- 4.2.2.1 Offeror shall specify how long and under what name(s) the Offeror has been in the business of providing services similar to those sought in this RFP.

- 4.2.2.2 For all Key Project Personnel, Offeror should provide a complete description of any relevant past projects, including qualifications, work experience, education, skills, and abilities.
- 4.2.2.3 Offeror shall provide an example of a final report in either electronic (preferred) or hardcopy format. The final report example must be authored by the same person(s) who will be responsible for authoring the final report for the Project. Offeror shall submit the same number of originals and copies as identified in the Copies Required and Deadline for Receipt of Proposals Section above.
- 4.2.3 **STAFFING**
 - 4.2.3.1 Key Project Personnel must be identified in the Proposal along with their specific roles and responsibilities associated with the Project.
 - 4.2.3.2 For each Key Project Personnel, list the amount of hours for each task.
 - 4.2.3.3 For each Key Project Personnel, list the percent of time per person allocated to the entire Project.
 - 4.2.3.4 Offeror must prove that sufficient resources are available to complete the Project. This should be done by describing for all Key Project Personnel the present and predicted workload in percent of time for all activities, including the Project, through the duration of the Project.
 - 4.2.3.5 If a contract is awarded, the highest-scoring Offeror will be the prime Consultant, who shall be responsible for all work of any subconsultant.
 - 4.2.3.6 All subconsultants, if any, must be listed in the Proposal.
 - 4.2.3.7 The Proposal must include a letter of intent from each subconsultant that said subconsultant intends to provide the work as described in the Proposal should the Offeror become the prime Consultant.
 - 4.2.3.8 The State reserves the right to approve all subconsultants.

4.3 ORAL PRESENTATION AND INTERVIEW

Offerors must be prepared to have key personnel assigned to this Project complete an oral presentation and interview in Helena, MT. Only the top three highest scoring Offerors will be invited to participate in the final presentation stage of the evaluation after scoring all other parts of the evaluation including cost.

5 COST PROPOSAL

5.1 SUBMITTAL OF PROPOSED BUDGET

- 5.1.1 The proposed budget must be submitted as a part of the Proposal.
- 5.1.2 For all services identified in this RFP, the proposed budget must, at a minimum, include itemized costs, for the following:
 - 5.1.2.1 each task;
 - 5.1.2.2 each expense category;
 - 5.1.2.3 each Deliverable and meeting, except for the Project kick-off meeting, monthly progress reports, task reports, and the final report. These itemized Deliverables and meetings may be deducted from the total Project budget if, at the sole discretion of the State, those events are deemed unnecessary and do not take place;
 - 5.1.2.4 number of hours of each person assigned to the Project;
 - 5.1.2.5 hourly and benefit rates for each person;
 - 5.1.2.6 overhead rate (proof of federally audited rate should be provided);
 - 5.1.2.7 all other direct and indirect costs, including profit;
 - 5.1.2.8 a total Project cost. Payment is based on cost reimbursement up to the total Project cost;
 - 5.1.2.9 a breakdown by state (July 1-June 30) and federal (October 1-September 30) fiscal year. Within one day of request, but before final funding is approved, depending on the time it takes to review proposals, the successful Offeror may be required to submit a revised breakdown.
- 5.1.3 Equipment and non-expendable supply purchases are allowed only under extenuating circumstances.

5.2 PROJECT FUNDING

- 5.2.1 The State has no “set” funding for this Project.
- 5.2.2 The funding will be based upon the Offeror’s budget necessary to complete the Project.
- 5.2.3 Accordingly, it is essential that the budget be based on the Offeror’s understanding and approach to the Project, experience, staff assigned to the Project, and the time that it will take the Offeror to complete the Project.

5.3 BUDGET REVISIONS

- 5.3.1 If at any time during the Project, the proposed state and federal fiscal year expenditures change, the Consultant must provide, for the duration of the Project, revised estimated expenditures for each state and federal fiscal year.

6 PROPOSAL EVALUATION

6.1 EVALUATION CRITERIA

- 6.1.1 The Evaluation Committee will review and evaluate the Proposals according to the following criteria based on a total of 1,000 points and using the below Scoring Guide and Scoring of Proposals Sections.
- 6.1.2 In the event the Evaluation Committee, in its sole discretion, determines the proposed budget and/or staffing level, as described above in the Cost Proposal and Offeror Qualifications Sections, are not commensurate with the scope of services, then the budget and/or staffing level may be negotiated or the Proposal may be found to be non-responsive. This will not affect the cost score.

6.2 SCORING GUIDE

- 6.2.1 **Superior Response (90-100%):** A superior response is highly comprehensive and excellent, meeting all of the requirements of this RFP. In addition, the response may cover areas not originally addressed within this RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.
- 6.2.2 **Good Response (75>90%):** A good response meets all the requirements of this RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the Project, with no deficiencies noted.
- 6.2.3 **Fair Response (60>75%):** A fair response minimally meets most requirements set forth in this RFP. The Offeror demonstrates some ability to comply with guidelines and requirements of the Project, but knowledge of the subject matter is limited.
- 6.2.4 **Failed Response (0>60%):** A failed response does not meet the requirements set forth in this RFP. The Offeror has not demonstrated knowledge of the subject matter or adequate resources or abilities to complete the Project.

6.3 SCORING OF PROPOSALS

CATEGORY	POSSIBLE POINTS
References (50 points each)	150
Resumes, Company Profile, Experience (length and applicability), and Qualifications (include final report example)	175
Scope of Services: understanding and approach, project staffing (including roles and workload) and timeline	375
Proposal completeness, clarity, and conciseness	150
Proposed Budget	150
Oral Interview: Clarification of the Offeror's Proposal and further definition of the offers; Oral Presentation, Knowledge of Presenters; Constructive Interaction with the State; Ability to Communicate	200

Lowest overall cost receives the maximum allotted points. All other Proposals receive a percentage of the points available based on their cost relationship to the lowest. Example: Total possible points for cost are 200. Offeror A's cost is \$20,000. Offeror B's cost is \$30,000. Offeror A would receive 200 points. Offeror B would receive 134 points ($\$20,000/\$30,000 = 67\% \times 200 \text{ points} = 134$).

Proposed Budget = (Total Cost of Lowest Responsive Proposal / This Offeror's Total Cost) x Number of Points Possible

Only three of the top highest scoring Offerors will be invited to participate in the final Oral interview/presentation stage of the evaluation after scoring all other parts of the evaluation including cost.

APPENDIX A: CONTRACT

PROJECT TITLE:			
CONTRACT DATE			PROJECT NO.
CFDA #	20.005	PROGRAM NAME	Highway Planning and Construction
CONSULTANT:		CIVIL RIGHTS NOTICE	
MONTANA DEPARTMENT OF TRANSPORTATION PO BOX 201001 HELENA MT 59620-1001		SEE CONTRACT FOR FULL TEXT (Appendix D): The Consultant must, in performance of this Contract, fully comply with all applicable federal, state or local laws, ordinances, rules and regulations. Any subletting or subcontracting by the Consultant subjects subconsultants to the same provisions of law.	

This Contract, is entered into by and between the State of Montana, Department of Transportation, whose address and phone number are 2701 Prospect Avenue, Helena, MT 59620, (406) 444- and , (hereinafter referred to as the "Consultant"), whose nine digit Federal ID Number, address and phone number are and , ("Parties").

IN CONSIDERATION OF THE MUTUAL BENEFITS HEREIN OBTAINED, THE PARTIES AGREE AS FOLLOWS:

1.0. RFP. The terms of the RFP are incorporated herein by reference.

2.0. PROPOSAL. The terms of the Proposal are incorporated herein by reference.

3.0. EFFECTIVE DATE, DURATION, AND RENEWAL

3.1. Contract Term

- 3.1.1.** After the Consultant has provided the State with the draft final report, the State will conduct an internal review. Once the State has accepted the final report, the Consultant and State, upon mutual agreement, will schedule the final presentation, implementation meeting, and the Due Dates for the remaining final Deliverables to be completed within three (3) months of such acceptance. The completion and acceptance of the all the final Deliverables will formally terminate this Contract.
- 3.1.2.** This Contract term may be extended only under extenuating circumstances. In the event the Consultant requests a contract extension, approval, at the State's option, may be contingent upon submittal of the work product completed to date.

4.0. SERVICES

- 4.1.** The Consultant represents that it is qualified and able to conduct and complete the Project and agrees to provide to the State the following .
- 4.2.** Before any changes are made in Key Project Personnel, the State must be advised and must approve said changes. In some cases the State may require the Consultant, without additional consideration, to subcontract with the original Key Project Personnel.
- 4.3.** The Consultant is expected to stay on scope, time, and budget and shall notify the MDT promptly of any circumstance that may have an adverse effect on the Project scope, time, or budget.
- 4.4. DELIVERABLES:** The Deliverables, and their on-time submission, are an integral part of this Contract. If the Deliverables are delinquent or not provided, then this Contract work has not been completed and payment may not be made. If a contract extension is granted for the Project, the progress reporting requirement will continue during any such extension.
 - 4.4.1. REPORTS**

- 4.4.1..1 [Placeholder for REPORTS specified in the proposal, clarification, and/or need to be specified in this Contract.]
- 4.4.1..2 The draft final report and final report cover picture Due Date is .
- 4.4.2. MEETINGS**
 - 4.4.2..1 Interim Meetings shall be held to resolve technical or contractual problems that develop.
 - 4.4.2..1.1 Interim Meetings shall be coordinated by MDT.
 - 4.4.2..1.2 The Consultant will be given a minimum of three full business days' Notice of the date, time, and location of Interim meetings.
 - 4.4.2..1.3 At the sole discretion of MDT, a conference call meeting may be substituted for face-to-face meetings.
 - 4.4.2..1.4 There shall be no additional cost to MDT for Interim Meetings,
 - 4.4.2..1.5 Within one week after each Meeting, the Consultant shall prepare and submit to MDT, for approval, minutes from the meeting.
 - 4.4.2..2 [Placeholder for MEETINGS specified in the proposal, clarification, and/or need to be specified in this Contract.]
 - 4.4.2..2.1 Two weeks prior to each of the above Meetings, and after seeking input from the MDT Research Project Manager, the Consultant will prepare and submit the meeting agenda and materials.
 - 4.4.2..2.2 Within two weeks after each of the above Meetings, the Consultant shall prepare and submit to MDT for approval, minutes from the meeting.

5.0. SUPPLIES, EQUIPMENT & INSTRUMENTATION

- 5.1.** Purchase of supplies or Non-Major Equipment, listed as a lump sum in the Proposal and for which reimbursement is sought, will not exceed such lump sum unless approval Notice is given by the State prior to purchase.
- 5.2.** Major Equipment, for which reimbursement is sought and which are not identified specifically in the Proposal and approved as part of this Contract, must receive approval Notice from the State prior to purchase.
- 5.3.** All apparatus, equipment and non-expended supplies will be returned to the State at the end of this Contract.

6.0. COMPENSATION

- 6.1.** SOURCE OF FUNDS. Unless otherwise indicated herein, funds made available by Federal law, including 23 U.S.C., Section 505, will be used in payment.
- 6.2.** PAY ITEMS: Subject to the provisions of this Section, the Consultant shall be compensated no more than .
 - 6.2.1. DIRECT COSTS**
 - 6.2.1..1 All Direct Costs shall be those itemized in the Proposal.
 - 6.2.1..2 Payments to Consultant's staff or students on this Project will not exceed the amounts normally paid to such Employees for regular employment with the Consultant.
 - 6.2.1..3 The Consultant certifies that any projected salary rate increases included in the Proposal are reasonably based on the Consultant's usual and customary practices.
 - 6.2.1..4 Payroll fringe benefits must be based on current established rates.
 - 6.2.1..5 Receipted invoice cost of materials, equipment, and supplies used in conducting the Consultant's work will not exceed lump sum or itemized amounts in the Proposal.
 - 6.2.1..6 Equipment rental will be charged at rates established for Consultant's charges in the Consultant's own operations, only for use incurred on the Project, and will be not exceed the equipment rental charges itemized in the Proposal.
 - 6.2.1..7 The cost of subconsultants will not exceed the amount itemized in the proposal.

- 6.2.1..8 Travel and transportation expenses incurred for travel directly connected with the Project will be paid at rates prescribed in MCA § 2-18-501, *et seq* and will not exceed the amount itemized in the Proposal.
- 6.2.1..9 Regular office expenses are excluded from Direct Costs and must be included in the Indirect Costs or overhead.
- 6.2.2. INDIRECT COSTS**
 - 6.2.2..1 If indirect costs are charged to the Project, Consultant must ensure Consultant's organization has an approved indirect cost plan in accordance with 2CFR200. If MDT is Consultant's primary source of federal funds then a copy of Consultant's indirect cost plan must be submitted to MDT for review and approval. **Indirect costs are capped at %.**
- 6.3. ITEMS FOR WHICH COMPENSATION IS NOT ALLOWED INCLUDE THE FOLLOWING:**
 - 6.3.1.** activities outside the Consultant's work for this Project;
 - 6.3.2.** work required to correct perceived ambiguities, errors, or omissions resulting from Consultant's work;
 - 6.3.3.** unless prior approval Notice is given by MDT, Employee overtime payments;
 - 6.3.4.** unless prior approval Notice is given by MDT, purchase of supplies or Non-Major Equipment in excess of those itemized or listed as a lump sum in the Proposal;
 - 6.3.5.** unless prior approval Notice is given by MDT, any Major Equipment not itemized in the Proposal;
 - 6.3.6.** deliverables required but not provided; and
 - 6.3.7.** deliverables itemized as a direct cost in the proposal but which MDT, in its sole discretion, deems to be unnecessary
- 6.4. CLAIMS FOR COMPENSATION**
 - 6.4.1.** Payment to the Consultant will be on a cost reimbursement basis for actual direct and indirect costs **incurred in the performance of this Contract OR related to each task.**
 - 6.4.2.** Invoices with backup documentation, detailing the charges and expenses incurred, will be submitted to the MDT Research Project Manager.
 - 6.4.3.** Reimbursement will not be made for any costs not clearly and accurately supported by the Consultant's records and not submitted within ninety (90) days of the date **originally incurred OR of the acceptance of each task report as final.**
 - 6.4.4.** Progress claims must be identified by the designation "progress" and the final claim by the designation "final."
 - 6.4.5.** For each invoice, the consultant will certify:
 - 6.4.5..1 The claim is correct and just in all respects.
 - 6.4.5..2 Payment or credit has not been received.
 - 6.4.5..3 Any subconsultant claims included with the claim is the result of a legally executed subconsultant agreement that contains all the requirements of this Contract.
 - 6.4.6.** Retainage
 - 6.4.6..1 Progress payments shall not exceed 85% of the total Project budget, with payment of the 15% retainage being made after all Deliverables are accepted as final by the State.
 - 6.4.6..2 In addition to the 15% retainage, the State may withhold payments to the Consultant if the Consultant has not performed in accordance with this Contract.

7.0. ACCESS, AUDIT, AND RETENTION OF RECORDS

- 7.1. ACCESS TO RECORDS.** The Consultant agrees to provide the State, Legislative Auditor, or its authorized agents access to any records necessary to determine contract compliance. (18-1-118, MCA.)
- 7.2. AUDIT.** At the request of MDT, the Consultant agrees to submit to an audit.
- 7.3. RETENTION PERIOD.** The Consultant agrees to create and retain records supporting the services as detailed herein for a period of three years after either the completion date of this

Contract or the conclusion of any claim, litigation or exception taken by the State of Montana or a third party arising out of this Contract.

8.0. HOLD HARMLESS/INDEMNIFICATION

- 8.1.** The Consultant agrees to defend, protect, indemnify and hold harmless the State of Montana, MDT, and its assigns, agents, partners, officials, officers, directors, Employees, attorneys, and insurers, in both their individual and official capacities, and any and all other persons, associations, partnerships, corporations, who together with MDT may be directly or indirectly liable, against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney's fees), and losses to them from any cause whatever (including patent, trademark and copyright infringements) arising from this Contract and performance of Consultant's obligations hereunder. This includes any suits, claims, actions, losses, costs or damages of any kind, including the State's and MDT's legal expenses, arising out of, in connection with, or incidental to this Contract, but does not include any such suit, claim, action, loss, cost or damage which is solely the result of the negligent acts, omissions or misconduct of MDT's Employees if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Consultant.
- 8.2.** The Consultant assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of Consultant's own Employees, the Employees of any subconsultant, and the public. That responsibility includes all duties relating to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Safe Place to Work Statute, etc.).
- 8.3.** The Consultant agrees to indemnify and hold harmless the State of Montana and MDT from and against all claims arising out of tax liability, including for withholding from Consultant's Employees for federal or state income tax purposes.
- 8.4.** MDT assumes no liability for the accuracy or completeness of information generated by sources other than MDT.
- 8.5.** Following MDT's notice of acceptance of Consultant's work, the Consultant will be indemnified, defended, and held harmless for any changes or revisions to Deliverables if such changes or revisions are made without Consultant's knowledge and written consent.
- 8.6.** In the event of any claim by any third party against the State that the products furnished under this Contract infringe upon or violate any patent or copyright, the State shall promptly notify the Consultant. Consultant shall defend such claim, in the State's name or in its own name, as appropriate, but at the Consultant's sole expense. Consultant will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action and charge the Consultant for its litigation expense, including attorneys fees.
- 8.7.** Provided, the foregoing indemnity shall not apply if the claim results from:
 - 8.7.1.** the State's alteration of a Deliverable, such that said Deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or
 - 8.7.2.** the use of a Deliverable in combination with other material not provided by Consultant when such use in combination infringes upon an existing U.S. letter patent or copyright; or
 - 8.7.3.** the use of a Deliverable in a manner inconsistent with any specifications provided by the Consultant.
- 8.8.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Consultant shall, at its option, either procure for the state the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State is prevented by injunction, the State, in its sole discretion, will determine if this Contract has been breached.

9.0. REQUIRED INSURANCE

- 9.1.** GENERALLY,

- 9.1.1. Before beginning work under this Contract, the Consultant shall provide to MDT documentation of the listed insurance coverages.
- 9.1.2. All coverages shall be
 - 9.1.2..1 placed with an insurer with a Best's rating of no less than
 - 9.1.2..1.1 A and Financial Size Category V or
 - 9.1.2..1.2 A- AND FINANCIAL SIZE CATEGORY IX.
- 9.1.3. MDT, its officers, officials, Employees, and volunteers are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Consultant, including the insured's general supervision of the Consultant; products and completed operations; premises owned, leased, occupied, or used.
- 9.1.4. MDT shall receive cancellation notices directly from the insurer.
- 9.1.5. The Consultant must notify MDT, immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc.
- 9.1.6. MDT reserves the right to require complete copies of insurance policies.
- 9.1.7. The Consultant's insurance coverage shall be primary.
- 9.1.8. Any insurance or self-insurance maintained by the State shall be in excess of the Consultant's insurance and shall not contribute with it.
- 9.1.9. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by MDT. At the request of MDT, either: (1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to MDT, its officers, officials, Employees, and volunteers; or (2) The Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- 9.1.10. ERRORS AND OMISSIONS. With coverage limits of not less than One Million Dollars (\$1,000,000), Consultant shall maintain professional liability insurance as defined by MCA § 33-9-101.
- 9.1.11. COMMERCIAL GENERAL LIABILITY. The Consultant shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such bodily injury, personal injury, or property damage claims as may be caused by the negligent acts of the Consultant.
- 9.1.12. AUTOMOBILE LIABILITY. For all motor vehicles leased, hired, or borrowed by the Consultant, the Consultant shall purchase and maintain coverage with split limits of \$1,000,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$3,000,000 per occurrence to cover such claims as may be caused by the negligent acts of the Consultant or its officers, agents, representatives, assigns, subconsultants or employees of subconsultants.

10.0. INDEPENDENT CONTRACTOR

- 10.1. This is a professional services contract.
- 10.2. An individual who is presently an Employee of the State of Montana will not be considered for potential award of this Contract.
- 10.3. A successful Offeror, who, during the RFP or during the term of this Contract, becomes an Employee of the State of Montana, must immediately provide Notice to the State's Research Project Manager, as described in this Contract.
- 10.4. Consultant agrees that if it hires an Employee of the State of Montana to perform more than 50% of the work, this Contract is subject to immediate termination.
- 10.5. It is expressly agreed that in fulfilling the terms of this Contract the Consultant is an Independent Contractor and is not an Employee of the State.

11.0. FEDERAL AID REQUIREMENTS

11.1. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

- 11.1.1. In order to assure high quality performance in conformity with approved plans and specifications and a high degree of reliability on statements and representations

made by engineers, consultants, suppliers, and workers on federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of federal law.

- 11.1.2.** To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice applies to all activities under this Contract. It shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the Project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS 18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than five years, or both."

11.2. INSTRUCTIONS CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – PRIMARY COVERED TRANSACTIONS

(Applicable to all Federal-aid contracts – 49 CFR 29): By submitting the Proposal and executing this Contract, the Consultant provides the certification set out below.

- 11.2.1.** The certification is a material representation of fact upon which reliance was placed when MDT determined to enter into this Contract.
- 11.2.2.** If it is later determined that the Consultant knowingly rendered an erroneous certification, such consultant shall be in default of this Contract. In addition to other remedies available to the Federal Government or MDT, MDT may, in its sole discretion, terminate this Contract for cause.
- 11.2.3.** If any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the MDT Contracting Liaison.
- 11.2.4.** The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction,"

"principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. For assistance in obtaining a copy of these regulations, you may contact the MDT Contracting Liaison.

- 11.2.5. Unless specifically authorized in writing by the MDT Contracting Liaison, the Consultant shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in any affected program.
- 11.2.6. In all lower tier covered transactions and in all solicitations for lower tier covered transactions Consultant shall include without modification the section titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction".
- 11.2.7. Unless it knows that the certification is erroneous, a participant in a covered transaction may rely upon the Consultant's certification that a prospective participant in a lower tier covered transaction is not debarred, suspended, ineligible, or voluntarily excluded from any affected program. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant shall check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 11.2.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 11.2.9. Except for transactions authorized, in writing, by the MDT Contracting Liaison, a participant in a covered transaction who knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation any affected program is in default of this Contract. In addition to other remedies, MDT may terminate this transaction for cause.

11.3. INSTRUCTIONS FOR CERTIFICATION – LOWER TIER COVERED TRANSACTIONS

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more – 49 CFR 29): By signing and submitting any subcontract, purchase order or other lower tier transaction of \$25,000 or more, the prospective lower tier participant is providing the certification set out below.

- 11.3.1. The certification is a material representation of fact upon which reliance was placed when the transaction was entered into.
- 11.3.2. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available, the Federal Government or MDT may pursue suspension and/or debarment.
- 11.3.3. If at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, the lower tier participant shall provide immediate written notice to the MDT Contracting Liaison.
- 11.3.4. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. For assistance in obtaining a copy of these regulations, you may contact the MDT Contracting Liaison.
- 11.3.5. The prospective lower tier participant agrees that except for transactions authorized, in writing, by the MDT Contracting Liaison, it/he/she shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in a covered transaction,
- 11.3.6. The prospective lower tier participant further agrees by submitting a Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension,

Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

11.3.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

11.3.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

11.3.9. Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available, the Federal Government or MDT may pursue suspension and/or debarment.

11.4. CERTIFICATION: Each Consultant and lower tier participant certifies to the best of its/his/her knowledge and belief, for it/his/herself and for each of its/her/his principals that:

11.4.1. None are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or by any federal department or agency;

11.4.2. Within a 3-year period preceding the submission of the Proposal, none has been convicted of or has had a civil judgment rendered against it/him/her for commission of fraud or for a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; or for violation of Federal or State antitrust statutes or for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

11.4.3. None is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

11.4.4. Within a 3-year period preceding submission of the Proposal, none has been in default of one or more public (federal, state or local) transactions.

11.4.5. Within a 3-year period preceding submission of the Proposal, none has had one or more public (federal, state or local) transactions terminated for cause.

11.5. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 – 49 CFR 20). Each Consultant and lower tier participant certifies and agrees:

11.5.1. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or Employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

11.5.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Consultant or lower tier participant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- 11.5.3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 11.5.4. The language of this certification shall be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

12.0. INTELLECTUAL PROPERTY AND OWNERSHIP

- 12.1. All Deliverables and components thereof, including but not limited to data, summaries, charts, records, materials, manuals, etc., collected, developed, and prepared as a result of this Contract are the property of the State for its exclusive use.
- 12.2. All pre-existing materials provided by Consultant under this Contract shall remain the property of Consultant.
- 12.3. In the event that a patentable discovery or invention is produced as a result of the performance of this Contract, the State hereby grants to the Consultant all rights necessary to obtain such patents and any related rights in exchange for which the Consultant grants to the State and to the FHWA irrevocable, non-transferable, non-exclusive royalty-free licenses to practice, use, refine, modify, dispose of and/or manufacture any material, invention, report, data or other product of this Contract. The Consultant shall bear all costs arising from any attempt to obtain intellectual property rights.
- 12.4. Prior to the termination of this Contract, the Consultant may not publish any information derived from this Project. Or, to obtain approval to publish, the Consultant may seek the State's approval Notice and provide sixty (60) days' review time.
- 12.5. At no additional cost, the State must be provided with a copy of all published materials, the State and FHWA must be acknowledged therein as the Project sponsor, and publications after the termination of this Contract must include a statement indicating that MDT has accepted or has not accepted the final report. This provision shall survive termination of this Contract.

13.0. CONTRACT TERMINATION

- 13.1. If MDT, in its sole discretion, determines it to be in the best interest of MDT, MDT may terminate this Contract at any time upon fifteen (15) days' Notice to the Consultant.
- 13.2. If this Contract is terminated for any of the following reasons:
 - 13.2.1. if available funding is reduced for any reason, and MDT, at its sole discretion, terminates or reduces the scope of this Contract, Mont. Code Ann. § 18-4-313 (3);
 - 13.2.2. due to unforeseen circumstances, MDT determines it is in the best public interest to abandon, reduce, or change the Project covered by this Contract; or
 - 13.2.3. Force Majeure, thenthe Consultant shall be entitled to the value of services rendered up to the time of termination. The reasonable value of such services shall be based on the method of payment as defined in the Proposed Budget.
- 13.3. The Consultant may not be entitled to termination costs:
 - 13.3.1. if the services of the Consultant prove unsatisfactory,
 - 13.3.2. if the Consultant fails to perform with due diligence the terms of this Contract,
 - 13.3.3. if the Consultant refuses to allow access to records as required by law,
 - 13.3.4. if the Consultant fails to participate in problem resolution meetings or misses required meetings.
 - 13.3.5. if the Consultant fails to make a good faith effort to resolve problems.
 - 13.3.6. if the required services or any part of them are not completed within the time limits specified, or
 - 13.3.7. without prior approval of MDT, due to changes in Key Project Personnel that may jeopardize the Project.
- 13.4. **NOTICE TO CURE.** At the option of the State, the Consultant may be given written notice of the stated failure or default, demanding performance of the stated failure or correction of the default within a specified period of time of not less than thirty (30) days. If the demanded performance

is not completed within the specified period, the termination is automatically effective at the end of the specified period.

14.0. LIAISON AND SERVICE OF NOTICES

- 14.1.** All Project management and coordination on behalf of the State shall be through a single point of contact designated as the State's Research Project Manager.
- 14.2.** The State's Research Project Manager may be changed by written notice to the other party.
- 14.3.** The Consultant's Principal Investigator shall be the liaison that will provide the single point of contact for management and coordination of the Consultant's work.
- 14.4.** All work performed pursuant to this Contract shall be coordinated between the State's Research Project Manager and the Consultant's Principal Investigator. Notices, requests, or complaints will first be directed to the following:

_____ will be the State Research Project Manager for the State.

_____ (Address)

_____ (City, State, ZIP)

_____ (Telephone #)

_____ (Cell Phone #)

_____ (Fax #)

_____ (E-mail)

_____ will be the Principal Investigator for the Consultant.

_____ (Address)

_____ (City, State, ZIP)

_____ (Telephone #)

_____ (Cell Phone #)

_____ (Fax #)

_____ (E-mail)

- 15.0. CONSULTANT PERFORMANCE ASSESSMENTS.** The State may conduct assessments of the Consultant's performance. Consultant will have the opportunity to respond to poor performance assessments. Performance assessments may be considered in future solicitations.

16.0. TRANSITION ASSISTANCE

- 16.1.** If this Contract is not renewed at the end of the primary term, if it is terminated prior to the completion of a Project, or if the work on a Project is terminated, for any reason, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees, the Consultant must provide for a reasonable period of time, (at least 60 days) after the termination of the Project or this Contract, all reasonable transition assistance requested by the State.
- 16.2.** Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract. The State shall pay the Consultant at the most current rates provided by this Contract for any resources utilized in performing such transition assistance. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a Project or this Contract for cause, then the State will be entitled to offset from any damages the State may have otherwise accrued as a result of said termination, the cost of paying the Consultant for the additional resources the Consultant utilizes in providing transition assistance.

17.0. STANDARD TERMS AND CONDITIONS

17.1. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

- 17.1.1.** Except as shown in the Proposal, without the express Notice by MDT, the Consultant shall not assign, transfer, or subcontract any portion of this Contract, (MCA § 18-4-141). MDT may declare void any unapproved transfer, assignment, or subcontract, (MCA § 18-4-141).
- 17.1.2.** All subcontracts shall:
 - 17.1.2..1** be in writing;

- 17.1.2.2 incorporate therein this Contract; and
- 17.1.2.3 be subject to the Federal Aid Requirements set forth in this Contract.
- 17.1.3. No subconsultant shall start work without a written subcontract.
- 17.1.4. All Subconsultants are agents of the Consultant.
- 17.1.5. The Consultant is responsible for all work, material furnished, and services rendered by the Subconsultant arising out of this Contract.
- 17.1.6. A subcontract does not release the Consultant from liability under this Agreement.
- 17.1.7. Nothing contained within this document or any contract documents created as a result of any contract award derived from the RFP shall create any contractual relationship between any subconsultant and the State.
- 17.1.8. No later than thirty (30) days from receipt of payment from MDT to Consultant, Consultant shall pay subconsultants for satisfactory performance of their subcontracts. Any delay or postponement of payment to the subconsultant may take place only for good cause, with MDT's prior Notice of approval. For any noncompliance, MDT may levy sanctions as set forth in the Non-Discrimination and Disability Accommodation Notice attached hereto and incorporated herein by reference.

17.2. AUTHORITY. This Contract is issued in accordance with Title 18 and 60, MCA, and the ARM, Title 2, chapter 5.

17.3. COMPLIANCE WITH LAWS

- 17.3.1. Failure by the Consultant to research the law will not relieve the Consultant of the responsibility for compliance with the law.
- 17.3.2. The Consultant must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules and regulations.
- 17.3.3. The Consultant shall be responsible for all required permits, licenses, fees and inspections associated with the Consultant's obligations hereunder.
- 17.3.4. When working in Montana, the Consultant shall comply with the Montana Human Rights Act. When working outside of Montana, the Consultant shall comply with the civil rights and/or human rights laws of that jurisdiction.
- 17.3.5. The Consultant assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of Consultant's own Employees, the Employees of any subconsultant, and the public. That responsibility includes all duties relating to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Safe Place to Work Statute, etc.).
- 17.3.6. **Workers' Compensation Act**
 - 17.3.6..1 The Consultant is required to supply the MDT Liaison with proof of compliance with the Montana Workers' Compensation Act, (MCA §§ 39-71-401 through 39-71-441). The proof of compliance must be in the form of workers' compensation insurance or an Independent Contractor Exemption. DOCUMENTATION OF CORPORATE PRINCIPAL STATUS IS NO LONGER SUFFICIENT.
 - 17.3.6..2 Coverage may be provided through a private carrier or through the State Compensation Insurance Fund. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division.
 - 17.3.6..3 The documentation required by this section must be received by the MDT Liaison within ten (10) working days of the execution of this Contract, before the Consultant begins work, and be kept current for the entire term of this Contract. Specifically, biennially on the anniversary of the issuance by the Montana Department of Labor of the Consultant's Independent Contractor Exemption, the Consultant shall update the Consultant's exemption documentation.
 - 17.3.6..4 FAILURE TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME WILL RESULT IN TERMINATION OF THIS CONTRACT.

17.3.7. NON-DISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE. The attached notice is incorporated herein by reference.

17.4. CONFORMANCE WITH CONTRACT. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Consultant's expense.

17.5. FORBEARANCE. Any forbearance on the part of MDT in the enforcement of any term or condition of this contract shall not be construed as a waiver of the obligatory effect of such provision.

17.6. SEPARABILITY. Unless the provisions are mutually dependent, a declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal or void shall not affect the legality and enforceability of any other provision of this Contract. This exception to separability shall not apply to provisions that are mutually dependent, as defined by 28-1-404, MCA.

17.7. SHIPPING. All shipping is prepaid by the Consultant, F.O.B. Destination.

17.8. TAX EXEMPTION. The State of Montana is exempt from Federal Excise Taxes. The State's Federal Employer Identification # is 81-0302402.

17.9. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED. The Consultant acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by Employees, subconsultants, Employees of subconsultants, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) For more information concerning non-visual access standards, contact the State Procurement Officer.

17.10. THIRD-PARTY BENEFICIARIES. This Contract is not intended to create any rights in any third-party beneficiary. This Contract does not authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

17.11. TIME IS OF THE ESSENCE of all terms and conditions of this Contract.

17.12. U.S. FUNDS. All prices and payments must be in U.S. dollars.

17.13. VENUE AND CHOICE OF LAW

17.13.1. This solicitation is governed by the laws of Montana, as now in existence or hereafter amended.

17.13.2. The parties agree that any litigation concerning the RFP, Proposal, or Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

17.13.3. Each party shall pay its own costs and attorney fees.

17.14. WARRANTIES. The Consultant warrants that any tangibles or tangible components provided under this Contract will conform to the specifications requested, will be fit and sufficient for the purpose manufactured, will be of good material and workmanship and free from defect. Any tangibles or tangible components must be new and unused and of the latest model or manufacture. Tangibles or tangible components shall be equal in quality and performance to those indicated in the Proposal. Descriptions and specifications used in the RFP are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Non-conforming tangibles or tangible components will be rejected.

18.0. SCOPE, AMENDMENT, AND INTERPRETATION

18.1. CONTRACT. This Contract consists of _____ pages and the following documents, which are incorporated herein by reference and control in the following order: Contract (including any amendments), RFP (including any addenda), and the Proposal (including any clarification and a best and final offer).

18.2. ENTIRE AGREEMENT. The documents described herein contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

19.0. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

DEPARTMENT OF TRANSPORTATION

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

Approved as to Legal Content:

Legal Counsel

Approved as to Civil Rights Language

Civil Rights Bureau

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

Approved as to Form:

State Procurement Officer

The Montana Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For more information or to arrange special accommodations for disabilities, please call Scott Hicks at (406) 444-6033 Voice or **1-800-335-7592 TTY OR (406) 444-7696 TTY.**

APPENDIX B: PROOF OF AUTHORITY

CORPORATE RESOLUTION

[INSERT NAME OF CORPORATION]

THIS RESOLUTION is made this ____ day of _____, 20____, by the undersigned, being all of the members of the Board of Directors of [Insert name of corporation] (the "corporation"). The undersigned waive any requirement that a special meeting be held for the transaction of the business resolved hereby.

WHEREAS, Article [Insert], Section [Insert] of the By-Laws of the corporation provides:

[Quote from By-Laws]; and

WHEREAS, the [Insert name of corporation] has provided to the Montana Department of Transportation (MDT) a Proposal in response to RFP #HWY- HWY-311733-SH; and

WHEREAS, it is in the best interest of the corporation to enter into said contract;

NOW THEREFORE BE IT RESOLVED:

That the President and Secretary of the corporation are authorized to execute the contract documents on behalf of the corporation.

DATED beneath the signatures of the Directors.

[Insert signature lines for all directors; get from last corporation annual report].

_____, Director
Dated: _____

_____, Director
Dated: _____

_____, Director
Dated: _____

AUTHORITY OF LIMITED PARTNERSHIP

[INSERT NAME OF LIMITED PARTNERSHIP]

STATE OF _____)
)
) ss.
 County of _____)

COMES NOW [Insert name of General Partner], after first being duly sworn, and affirms that the document attached hereto entitled [Insert title of limited partnership agreement] is a true and correct copy of the current existing agreement of the partners of [Insert Name of Limited Partnership].

Section [insert section number], starting on page [insert page number] identifies the name(s) of the individual(s) who have the authority to bind the limited partnership. The partners understand that each individual identified therein must sign the contract and give his/her personal guarantee for completion of any contract resulting from acceptance of the limited partnership's Proposal in response to RFP #HWY-311733-SH.

[Insert name of General Partner]
General Partner

Sworn and subscribed before me by [Insert name of general partner] this ____ day of _____, 20__.

[Printed Name of Notary]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

[NOTARIAL SEAL]

[INSERT NAME OF LIMITED LIABILITY PARTNERSHIP]

COMES NOW [Insert name of Managing Partner], after first being duly sworn, and affirms that the document attached hereto entitled [Insert title of limited liability partnership operating agreement] is a true and correct copy of the current existing operating agreement of [Insert Name of Limited Liability Partnership].

[Insert name of Managing Partner]
Managing Partner

[Printed Name of Notary]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

RFP#, Title, Non-Discrimination and Disability Accommodation Notice, Page 42

[INSERT NAME OF PARTNERSHIP]

COMES NOW [Insert name of Partner], after first being duly sworn, and affirms that the document attached hereto entitled [Insert title of partnership agreement] is a true and correct copy of the current existing agreement of the partners of [Insert Name of Partnership].

[Insert name of Partner], Partner

Sworn and subscribed before me by [Insert name of partner] this ____ day of _____, 20__.

[Printed Name of Notary]
Notary Public for the State of _____
Residing at: _____
My commission expires: _____

RFP#, Title, Non-Discrimination and Disability Accommodation Notice, Page 43

APPENDIX C: REFERENCE QUESTIONNAIRE

INSTRUCTIONS

This is a reference questionnaire for a research project titled MDT WILDLIFE ACCOMMODATION PROCESS for which the Montana Department of Transportation (MDT) has issued a request for proposal. The scope of the project is to develop a wildlife accommodations process and guidelines that evaluates the needs as well as feasibility at a project level, specifically tailored to meet MDT's project development processes and wildlife found in Montana.

You have been sent this questionnaire to provide a reference for the consultant responding to MDT's request.

The individual responding to this questionnaire must be a responsible party of the organization for which the services were provided and have comprehensive knowledge about the services provided.

If there are problems with this survey or an alternate format is needed, please contact:

Procurement Officer –

Address-
Purchasing Services Section
Montana Department of Transportation
2701 Prospect Avenue
Helena, MT 59620-1001

Telephone (406) 444-6033

Email – shicks@mt.gov

You and Your Organization

The individual responding to this must be a responsible party of the organization for which the services were provided and have comprehensive knowledge about the services provided.

1. Please provide your contact information so that we may contact you for additional information if necessary.

Name:
Company:
Email Address:
Phone Number:

2. What is your title?

Contractor Information

Please answer the following questions about the firm or individual (contractor) for which you are providing a reference.

1. For what firm AND individual are you providing a reference?

2. What were the contractor's (identified in question #1) dates of service for your project (s)?

3. What services did the contractor provide?

4. What skills were necessary to perform these services?

5. Did the contractor provide skilled and qualified staff to perform the job?

If no, please explain.

6. Were there any changes in key personnel?

If yes, please explain the situation (including who requested the change(s), did change(s) affect the project, and how were any issues resolved) and describe any related issues.

7. Are you familiar with any of the key project personnel identified in the e-mail requesting your reference?

If yes, please indicate which person(s) and describe how they were able to facilitate successfully completing contracted project(s).

Service Characteristics

Please take a few minutes to complete these questions on the quality of service the contractor provided. We welcome your feedback and appreciate your honesty.

1. Please select your criteria for choosing this consultant (select all that apply).

- a. Industry/marketplace knowledge
- b. Length of time in business
- c. Consultative capabilities
- d. Technology and Tools provided
- e. Personal Referral
- f. Lowest rate
- g. Responsiveness to requests
- h. Value added services
- i. Other (please specify)

Please add any additional comments or concerns below. An average or below rating should include an explanation in this section. Did the consultant have an opportunity to correct the problem and, if so, did they?

2. Please rate the following for the consultant (Excellent, Above Average, Average, Below Average, Poor, N/A.).

- a. Their work was timely.
- b. Their work was accurate.
- c. They kept you informed of progress and made efforts to maintain contact regarding progress.
- d. They addressed your questions and concerns
- e. The quality of the responses to your questions and concerns
- f. The timeliness of the responses to your needs
- g. Their knowledge level
- h. The products and services they provided met your objectives
- i. Their writing ability was sufficient to provide quality products
- j. They delivered the project within contract budget.
- k. They were easy to work with.

Please add any comments or concerns below. An average or below rating should include an explanation in this section. Did the consultant have an opportunity to correct the problem and, if so, did they?

3. Overall, what is your assessment of the following (Excellent, Above Average, Average, Below Average, Poor, N/A)?

- a. Performance
- b. Final Product(s)

Please add any comments or concerns below. An average or below rating should include an explanation in this section.

4. Were there any project extensions granted? If yes, please explain why and at whose request.
5. Were there any conflicts, disputes, or other problems? If yes, were they reported early and were they managed well? How were they resolved? Were you satisfied the resolution was fair to both parties?

Follow-up

1. To what extent was the consultant's product implemented?
2. Do you feel you received benefits that correspond to the project cost? Please explain why or why not.
3. If given a choice, would you hire the consultant again? Please explain why or why not.

Any additional comments?

APPENDIX D: NONDISCRIMINATION & DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture, political belief, genetic material, veteran status, or social origin/ancestry (hereafter "protected classes") by its employees or anyone with whom MDT chooses to do business.

For the duration of the contract, the contracting PARTY, which may be the Consultant (hereafter PARTY), agrees as follows:

(1) Compliance with Regulations: The PARTY will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of the contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under the contract.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
 - iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of the contract, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml.
- b. By signing the contract the PARTY assures that:

Any contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

c. PARTY must include the above assurance in each contract the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under the contract and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a person is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of the contract, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of the contract, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid

recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E: TECHNICAL REPORT DOCUMENTATION PAGE

1. Report No.		2. Government Accession No.		3. Recipient's Catalog No.	
4. Title and Subtitle		5. Report Date			
		6. Performing Organization Code			
7. Author(s)		8. Performing Organization Report No.			
9. Performing Organization Name and Address		10. Work Unit No.			
		11. Contract or Grant No.			
12. Sponsoring Agency Name and Address Research Programs Montana Department of Transportation 2701 Prospect Avenue PO Box 201001 Helena MT 59620-1001		13. Type of Report and Period Covered			
		14. Sponsoring Agency Code 5401			
15. Supplementary Notes Research performed in cooperation with the Montana Department of Transportation and the US Department of Transportation, Federal Highway Administration. This report and related materials can be found at [insert URL].					
16. Abstract					
17. Key Words			18. Distribution Statement Unrestricted. This document is available through the National Technical Information Service, Springfield, VA 21161.		
19. Security Classif. (of this report) Unclassified		20. Security Classif. (of this page) Unclassified		21. No. of Pages	
				22. Price	